

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 943 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

LUHAR GIRDHARBHAI NARSINHBHAI

Versus

COLLECTOR OF JUNAGADH & ORS.

Appearance:

Shri Jitendra M. Patel, Advocate, for the
Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 24/07/96

ORAL JUDGEMENT

The order passed by the Collector of Junagadh (respondent No. 1 herein) on 17th June 1987 as affirmed in revision by the order passed by and on behalf of the

State Government (respondent No. 2 herein) on 22nd January 1987 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 directed the petitioner to remove encroachment on one parcel of land admeasuring 84.70 square meters from survey No. 369(1)(part) situated at Veraval (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioner was granted the disputed land on lease for 7 years on certain terms and conditions by respondent No. 1 by the order passed on 10th August 1973. Its copy is at Annexure A to this petition. It appears that the petitioner wanted that land to be used for starting his small-scale industrial unit. He started a small-scale unit and he got it registered as such. Its recognition as a small-scale unit was conveyed by the Industries Officer at Junagadh by his communication of 3rd December 1974. Its copy is at Annexure B to this petition. It may be noted that one of the conditions of granting the land on lease was an application for renewal to be made before one month from the expiry of its duration. It appears that the petitioner did not apply for renewal of lease before expiry of one month of its duration of 7 years. Instead, he applied on 1st March 1983 to respondent No. 2 for grant of the disputed land on permanent lease or in the alternative its sale in his favour. A copy of his application is at Annexure C to this petition. It appears that respondent No. 2 found encroachment made by the petitioner in contravention of the Ribbon Development Rules. It appears that the petitioner thereupon applied for regularisation of encroachment. By his order passed on 17th June 1987, respondent No. 1 rejected the petitioner's application for regularisation. Its copy is at Annexure D to this petition. The aggrieved petitioner carried the matter in revision before respondent No. 1 under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief). A copy of the memo of revision is at Annexure E to this petition. By the order passed by and on behalf of respondent No. 2 on 22nd January 1987, the petitioner's revisional application came to be rejected. Its copy is at Annexure F to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure D to this petition as affirmed in revision by the order at Annexure F to this petition.

3. One of the grounds on which the petitioner's revisional application came to be rejected by the order

at Annexure F to this petition is that the duration of lease granted by the order at Annexure A to this petition came to be expired in 1980 and it was not got renewed. It transpires from the material on record that the petitioner took no steps for renewal of the lease by applying before one month from its expiry as stipulated in condition No. 4 in the order at Annexure A to this petition. I think the impugned order at Annexure F to this petition deserves to be affirmed on this ground alone.

4. Learned Advocate Shri Patel for the petitioner has urged that the petitioner's application for grant of the disputed land on permanent lease or in the alternative its sale in his favour at Annexure C to this petition is pending with respondent No. 1. If it is so, respondent No. 1 will dispose it of according to law. Learned Advocate Shri Patel for the petitioner has then urged that, in view of the order passed by respondent No. 1 at Annexure D to this petition as affirmed in revision by the order at Annexure F to this petition, the application at Annexure C to this petition may not be considered on the ground that the petitioner made encroachment on the land. It has been urged that there was no encroachment in view of the map at Annexure E2 to this petition prepared at the instance of the revisional authority as transpiring from para 9A in the memo of petition. It appears that the revisional authority has not applied its mind to this aspect of the case. It would be open to respondent No. 1 to take these factors into consideration while deciding the fate of the application at Annexure C to this petition if it is still pending. If the petitioner is found guilty of encroachment after perusing the map at Annexure E2 to this petition and if it could not be regularised, the petitioner's application at Annexure C to this petition may accordingly be disposed of. It would be desirable to give an opportunity of hearing or representation to the petitioner before deciding the fate of his application at Annexure C to this petition. Till the petitioner's application at Annexure C to this petition is disposed of, the petitioner's possession of the disputed land deserves not to be disturbed.

5. In the result, this petition substantially fails. It is hereby rejected. The Collector of Junagadh is however directed to dispose of the petitioner's application made on 1st March 1983 at Annexure C to this petition according to law in the light of this judgment of mine if it has remained pending so far. It is obvious that the petitioner's possession of the disputed land

will not be disturbed till the fate of his application at Annexure C to this petition is decided by respondent No. 2. Rule issued on this application subject to what is stated hereinabove is accordingly discharged.
